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FILED

KERN COUNTY SUPERIOR COURT

05/11/2023

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*Attorneys for Plaintiff, the Putative Class, the LWDA, and the Aggrieved Employees***SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR COUNTY OF KERN**Hipolito Hernandez, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

Jakov Dulcich and Sons, LLC, a California
Limited Liability Corporation and DOES 1 to
100, inclusive

Defendants.

CASE NO: Case No. BCV-20-102415

Judge: Hon. David Zulfa

**~~PROPOSED~~ ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 11, 2023

Time: 8:30 a.m.

Dept.: J

1 On May 11, 2023, the Court held a hearing on Plaintiff Hipolito Hernandez’s (“Plaintiff”) Motion
2 for Final Approval of Class Action Settlement and Attorneys’ Fees and Costs between Plaintiff and
3 Defendant Jakov Dulcich and Sons, LLC and DOES 1 to 100, inclusive (“Defendants”) (collectively, the
4 “Parties”).

5 Due and adequate notice having been given to Class Members, and the Court having considered
6 the Class Action and PAGA Settlement Agreement (the “Settlement Agreement” or “Settlement”), all of
7 the legal authorities and documents submitted in support thereof, all papers filed and proceedings had
8 herein, all oral and written comments received regarding the proposed settlement, and having reviewed
9 the record in this litigation, and good cause appearing, the Court GRANTS final approval of the Settlement
10 and ORDERS AND MAKES THE FOLLOWING FINDINGS AND DETERMINATIONS:

11 1. All terms used in this Order Granting Final Approval of Class Action Settlement (the
12 “Order”) shall have the same meanings given as those terms are used and/or defined in the Parties’
13 Settlement Agreement.¹

14 2. The Court has personal jurisdiction over the Parties to this litigation and subject matter
15 jurisdiction to approve this Settlement and all exhibits thereto.

16 3. For settlement purposes only, the Court finally certifies the Class, as defined in the
17 Agreement and as follows:

18 “Plaintiff and all individuals who are or were employed by Jakov Dulcich and Sons, LLC as non-
19 exempt hourly-paid employees and who worked at least one shift from October 16, 2016 through
20 November 1, 2022 (“Settlement Class Members” or “Class Members”).

21 4. The Court deems this definition sufficient for the purpose of California Rule of Court
22 3.765(a) and for the purpose of effectuating the Settlement.

23 5. The Court finds that an ascertainable class of 1,477 Class Members exists and a well-
24 defined community of interests exists in the questions of law and fact involved because in the context of
25 the Settlement: (i) all related matters, predominate over any individual questions; (ii) the claims of the
26 Plaintiff are typical of claims of the Class Members; and (iii) in negotiating, entering into and
27 implementing the Settlement, Plaintiff and Class Counsel have fairly and adequately represented and

28 ¹ A copy of the Settlement Agreement is in the Court record as Exhibit 1 to the Declaration of Crag J. Ackermann in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and is made a part of this Order.

1 protected the interest of the Class Members.

2 6. The Court is satisfied that ILYM Group, which functioned as the Settlement Administrator,
3 completed the distribution of Class Notice to the Class in a manner that comports with California Rule of
4 Court 3.766. The Class Notice informed **1,477** Class Members of the Settlement terms, their rights to do
5 nothing and receive their settlement share, their rights to submit a request for exclusion, their rights to
6 comment on or object to the Settlement, and their rights to appear at the Final Approval Hearing, and be
7 heard regarding approval of the Settlement. Adequate periods of time to respond and to act were provided
8 by each of these procedures.

9 7. The Court deems this definition sufficient for the purpose of California Rule of Court
10 3.765(a), and solely for the purpose of effectuating the Settlement.

11 8. Not a single Class Member filed or submitted a written objection to the Settlement as part
12 of this notice process.

13 9. Only one class member requested to be excluded from the class action. The name of the
14 individual who requested exclusion from the settlement is Rey Martinez.

15 10. The Court hereby approves the terms set forth in the Settlement Agreement, including the
16 \$400,000.00 gross settlement amount, and finds that the Settlement Agreement is, in all respects, fair,
17 adequate, and reasonable, consistent and compliant with all applicable requirements of the California Code
18 of Civil Procedure, the California and United States Constitutions, including the Due Process clauses, the
19 California Rules of Court, and any other applicable law, and in the best interests of each of the Parties and
20 Class Members. The Court directs the Parties to effectuate the Settlement Agreement according to its
21 terms, and declares this Settlement Agreement to be binding on all Participating Class Members. The
22 Court finds that the Settlement Agreement has been reached as a result of informed and non-collusive
23 arm's-length negotiations. The Court further finds that the Parties have conducted extensive investigation
24 and research, and their attorneys were able to reasonably evaluate their respective positions.

25 11. The Court finds that the Settlement Agreement has been reached as a result of informed
26 and non-collusive arm's-length negotiations. The Court further finds that the Parties have conducted
27 extensive investigation and research, and their attorneys were able to reasonably evaluate their respective
28 positions.

1 12. The Court also finds that Settlement now will avoid additional and potentially substantial
2 litigation costs, as well as delay and risks if the Parties were to continue to litigate the case. Additionally,
3 after considering the monetary recovery provided as part of the Settlement in light of the challenges posed
4 by continued litigation, and the Court concludes that Class Counsel secured significant relief for Class
5 Members.

6 13. The Settlement Agreement is not an admission by Defendant, nor is this Order a finding of
7 the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement
8 Agreement, nor any document referred to herein, nor any action taken to carry out the Settlement
9 Agreement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission,
10 concession, or liability whatsoever by or against Defendant.

11 14. The Court confirms Hipolito Hernandez as Class Representative and finds him to be
12 adequate.

13 15. The Court confirms Craig J. Ackermann and Avi Kreitenberg of Ackermann & Tilajef,
14 P.C. and Amir Seyedfarshi of Employment Rights Law Group, APC as Class Counsel, and finds each of
15 them to be adequate, experienced, and well-versed in similar class action litigation.

16 16. The terms of the Agreement, including the gross settlement amount of **\$400,000.00**, and
17 the individual Settlement Shares, are fair, adequate, and reasonable to the Class and to each Class Member,
18 and the Court grants final approval of the Settlement set forth in the Agreement, subject to this Order. The
19 Court approves the following allocations, which fall within the ranges stipulated by and through the
20 Settlement Agreement:

- 21 a. The **\$18,000.00** designated for payment to ILYM Group, the Settlement Administrator, is
22 fair and reasonable. The Court grants final approval of, and orders the Parties to make, the
23 payment to the Settlement Administrator in accordance with the Agreement.
- 24 b. The **\$140,000.00** requested by Plaintiff and Class Counsel for the Class Counsel's
25 attorneys' fees is fair and reasonable in light of the benefit obtained for the Class. The
26 Court grants final approval of, awards, and orders the Class Counsel Fees Payment to be
27 made in accordance with the Agreement.
- 28

c. The Court awards **\$12,464.50** in litigation costs, an amount which the Court finds to be reflective of the reasonable costs incurred. The Court grants final approval of, and orders the Class Counsel Litigation Expenses Payment in this amount to be made in accordance with the Agreement, and divided between counsel in proportion with their respective costs expenditures.²

d. The **\$10,000.00** requested by Plaintiff for his Class Representative Payments is fair and reasonable. The Court grants final approval of, and orders the Class Representative Payment to be made in accordance with the Agreement.

e. The Court grants final approval of the **\$20,000.00** PAGA payment, 75% of which shall be paid to the LWDA and orders the payment to be made in accordance with the Agreement.

17. The Court orders the Parties to comply with and carry out all terms and provisions of the Settlement, to the extent that the terms thereunder do not contradict or conflict with this Order, in which case the provisions of this Order shall take precedence and supersede the Settlement.

18. Nothing in the Settlement or this Order purports to extinguish or waive Defendant's rights to continue to oppose the merits of the claims in this Action or class treatment of these claims in this case if the Settlement fails to become final or effective, or in any other case without limitation. The Settlement is not an admission by Defendant, nor is this Order or the subsequent Judgment that Plaintiff have asked the Court to enter based on this Order a finding of the validity of any allegations against Defendants in the Court proceeding or any wrongdoing by Defendant. Neither the Settlement nor this Order or the subsequent Court Judgment is a finding that certification of the Class is proper for any purpose or proceeding other than for settlement purposes.

19. All Participating Class Members shall be bound by the Settlement and this Order, including the Released Claims in favor of Defendant and the other Released Parties as set forth in the Agreement, and are permanently barred and enjoined from prosecuting against Defendant and the other Released

² The Settlement Agreement contemplates litigation cost reimbursement in the amount of up to \$14,000.00 which was already preliminarily approved by this Court and noticed to the Class; however, Plaintiff's counsel is only requesting reimbursement of actual litigation costs incurred in the amount of \$12,464.50, with the balance added to the Net Settlement Amount to be distributed to the Participating Class Members. See AS Decl., ¶¶ 24; CJA Decl., ¶¶ 18-19.

1 Parties any and all of Released Claims as defined in the Agreement.

2
3 20. Plaintiff is bound to the release of claims against Defendant and the other Released Parties
4 as set forth in the Settlement Agreement and are permanently barred from prosecuting against Defendant
5 and the other Released Parties any and all of the Plaintiff's Release as defined in the Agreement.

6 21. The Parties shall bear their own respective attorneys' fees and costs except as otherwise
7 provided in the Settlement Agreement.

8 22. The Court approves the one hundred eighty (180) day period for cashing of checks. Any
9 funds associated with stale checks that have not been cashed within one hundred and eighty days (180)
10 days will be distributed as follows:

11
12 a) If there is at least \$15,000.00 in uncashed checks after all reasonable efforts made to locate
13 class members, then a second distribution will take place with a payment of second
14 administration fees of no more than \$10,000, and the balance distributed pro rata to those
15 class members who cashed their checks in the first round of distribution. If any funds
16 remain after the second round of distribution, then the balance will be paid to Court
17 Appointed Special Advocates (CASA) of Kern County, a cy pres selected by the mutual
18 agreement of the parties.

19
20 b) If there is less than \$15,000 in uncashed checks, the balance shall be paid to Court
21 Appointed Special Advocates (CASA) of Kern County. The Parties, Class Counsel and
22 Defense Counsel represent that they have no interest or relationship, financial or otherwise,
23 with the intended Cy Pres Recipient.

24 23. The Settlement Administrator, within five (5) days of the date of this Order, shall give
25 notice to the Settlement Class pursuant to Rule 3.771(b) of the California Rules of Court, by posting a
26 copy of this order and judgment on its website for 60 days.

27 24. Pursuant to California Rule of Court 3.769(h), the Court retains jurisdiction solely for
28 purposes of implementing the terms of the settlement, such as requiring the filing of a final report on

1 distributions made to the Class Members, enforcing the Settlement Agreement, addressing settlement
2 administration matters, and addressing such post-Judgment matters as may be appropriate under court
3 rules or applicable law.

4 25. Plaintiff or the Settlement Administrator shall file with the Court a report regarding the
5 status of distribution within sixty (60) days after all funds have been distributed.

6 **IT IS SO ORDERED.**

7 DATED: Signed: 5/11/2023 02:02 PM



HON. DAVID ZULFA
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA